US.Pat.Apl.Nr 10/694,835 Docket: 221-46US

Remarks
submitted May 2006

[001] This is responsive to the (final) Office Action dated 08 March 2006.

[002] **Amendments.**

We request that the proposed amendment to Claim 4, and the cancellation of claim 16, as enclosed, now be entered.

The examiner intimated that the amendment might lead to withdrawal of the 35 USC 112 rejection.

[003] Rejection of claim 17.

Although claim 17 is said to be rejected, the O/A sets out no basis for the rejection. That being so, presumably claim 17 is allowed.

[004] Re the double-patenting rejection based on US-6,727,091. (221-40US)

We note the *In re King* doctrine, as: Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process.

The "method claimed", as recited in claim 1 of the instant application, includes the step of passing the ammonia-contaminated air in a room though the matrix of the hydroponic apparatus, again and again on a recirculating basis, whereby the ammonia is taken into solution in the hydroponic water.

Now, the "normal and usual operation" of the device depicted in US-6,727,091 is described in US-6,727,091. We cannot see how this normal and usual operation described therein has anything whatever to do with passing ammonia-laden air through the device depicted in US-6,727,091. In other words, when the device depicted in US-6,727,091 is used in its normal and usual operation, the device will NOT perform the method claimed in claim 1 of the instant application.

Now, if it were true that the device depicted in US-6,727,091 had been normally and usually

used to remove ammonia from an ammonia-contaminated room, then present claim 1 of course would be anticipated. But the fact is that it took an act of invention, on the part of the present applicant, to recognise that the device depicted in US-6,727,091 would have the capability and/or suitability, as a physical apparatus, to be used in an ammonia clean-up process. Such usage therefore is NOT, by definition, part of the normal and usual operation of the device depicted in US-6,727,091.

For the above reasons, we cannot see that US-6,727,091 provides any basis for a double-patenting rejection, and we request that the rejection be withdrawn.

[005] Re the provisional double-patenting rejection based on US-10/942,872. (277-13US)

We repeat what we say above, changing US-6,727,091 to US-10/942,872.

[006] We note, in respect of both the above double-patenting rejections, that if the devices depicted in US-6,727,091 and in US-10/942,872 really did anticipate the present method claims, that would give rise to a rejection under 35.USC.102, rather than to a double-patenting rejection. In any event, the depicted devices do not anticipate the present method claims.

[007] This application being now in all respects in condition for allowance, we look forward to receiving notification to that effect.

Submitted by:

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Enclo:
- amended claims (4 pages)